

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

IN RE APPOINTMENT OF SPECIAL
PROSECUTOR

IN THE CASE OF THE PEOPLE OF THE STATE
OF ILLINOIS v. JEDIDIAH BROWN,
CASE NO. 2018-1-20981901

No. 2019 Misc. R. 00015

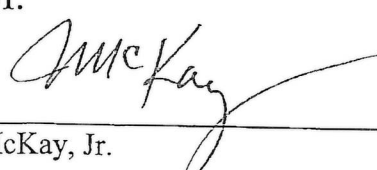
The Honorable Leroy K. Martin, Jr.

NOTICE OF MOTION

TO: Kimberly Foxx
Cook County State's Attorney
69 West Washington St.
32nd floor
Chicago, IL 60602

Kimberly Foxx
Cook County State's Attorney
2650 S. California Ave.
11th floor
Chicago, IL 60608

PLEASE TAKE NOTICE that on Tuesday, April 23, 2019 at ^{9AM} ~~1:30 p.m.~~ I will appear before the Honorable Leroy K. Martin, Jr., in courtroom 101, at 2650 S. California Ave., Chicago, IL 60608 at the Circuit Court of Cook County, Criminal Division, and will then and there present the attached **Petition to Appoint a Special Prosecutor in the Case of the People of the State of Illinois v. Jedidiah Brown, Case No. 2018-1-20981901.**


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The Honorable Leroy K. Martin, Jr.

PETITION TO APPOINT A SPECIAL PROSECUTOR
IN THE CASE OF THE PEOPLE OF THE STATE OF ILLINOIS
Vs. JEDIDIAH BROWN, CASE NO. 2018-1-20981901

Petitioners DAVID ALVAREZ, JR., JEREMY ARRINGTON, CORNELIUS BROWN, EMILIO DELEON, VICTOR GUEBARA, RODNEY HILL, JEFFERY SHAFER and DIMAR VASQUEZ, of the Chicago Police Department, by their attorney, James P. McKay, Jr., respectfully petition this Honorable Court pursuant to 55 ILCS 5/3-9008 for entry of an order appointing a special prosecutor to prosecute the case of The People of the State of Illinois vs. Jedidiah Brown, Case No. 2018-1-20981901, currently pending in the Circuit Court of Cook County, because Cook County State's Attorney Kim Foxx has an actual conflict of interest and further, to avoid the appearance of impropriety. In support, Petitioners state the following:

INTRODUCTION

1. On April 6, 2019 Cook County State's Attorney Kim Foxx appeared at a press conference held at Operation Push to address the criticism directed at her for her handling of the Jussie Smollett case. As Ms. Foxx stood at the podium and spoke at this videotaped event, anti-police activist Jedidiah Brown was standing with her at center stage. What's the problem with this, you might ask? Simply put, the answer is Jedediah Brown is currently charged in a criminal case that Ms. Foxx and her office is prosecuting. In Case No. 2018-1-

20981901, Mr. Brown is charged with battery to two of the Petitioners, both of whom were uniformed Chicago Police Officers acting in the line of duty on July 19, 2018. In addition, Mr. Brown is charged with resisting arrest and obstruction of traffic by a non-motorist. The case is pending in Branch 46. Mr. Brown is represented by counsel. Nevertheless, State's Attorney Foxx is seen standing in unity with this criminal defendant along with other anti-police activists including Ja'Mal Green, Bobby Rush and Flint Taylor. Worse, she is seen talking to Mr. Brown and later poses for a photograph with Mr. Brown for him to post on his Facebook page. Attached as Exhibits A, B and C are photographs of Ms. Foxx and Mr. Brown at Operation Push on April 6, 2019.

2. It was bad enough for the Petitioners to suffer punches and kicks from Jedidiah Brown while they tried to serve and protect the citizens of Chicago on July 19, 2018. It's worse now after the Petitioners saw Mr. Brown standing and smiling with the elected State's Attorney on April 6, 2019 and being left to wonder if their rights as victims and witnesses will be protected by the current prosecutor. Ms. Foxx's public alliance with Jedidiah Brown, while his criminal case is still pending, is just another punch and kick to these police officers, but this time it's to their confidence in the criminal justice system. At a minimum, the public display of solidarity between Ms. Foxx and Mr. Brown is an appearance of impropriety that mandates the removal of the Cook County State's Attorney and her office from the prosecution of Jedidiah Brown.
3. This Petition is being filed because of Petitioners' concern that the impartiality and integrity of our criminal justice system may be tainted by a political relationship that exists between State's Attorney Foxx and defendant Jedidiah Brown, and a working relationship that existed during Ms. Foxx' campaign for State's Attorney in 2015. Petitioners believe

that this relationship between Ms. Foxx and Mr. Brown raises questions that cry out for an objective, unbiased prosecutor to prosecute the defendant's case.

4. Petitioners submit that Cook County State's Attorney Kim Foxx is "interested" in the outcome of Jedidiah Brown's criminal case – but not the outcome most prosecutors strive for, i.e., the fair administration of justice and the protection of the public. No, Ms. Foxx has publicly committed herself and her office to the position that police reform is more important than enforcing the law, seeking justice and representing the victims of crime. Indeed, during her press conference at Operation Push on April 6, 2019 Ms. Foxx mentioned criminal justice reform not once but four times, each time with Jedidiah Brown standing behind Ms. Foxx nodding his head in approval. A State's Attorney with an interest in any cause or proceeding may be removed pursuant to 55 ILCS 5/3-9008 (a-10) when that interest becomes an actual conflict of interest. See *Environmental Protection Agency v. Pollution Control Board*, 69 Ill. 2d 394 (1977).
5. All persons are entitled to the protections of our Bill of Rights, including the presumption of innocence. Petitioners recognize and respect the presumption of innocence that Mr. Brown enjoys and that his criminal responsibility must not be pre-judged. Just as important, though, is the principle that all persons – even those in uniform – are equal before the law. Petitioners are not asking to be treated differently simply because they are police officers and that their commitment to law and order is different from Ms. Foxx's commitment, or lack thereof. The Petitioners seek nothing more and nothing less than a just, unbiased prosecution of Jedidiah Brown. The Petitioners seek fairness. But when the State's Attorney of Cook County holds herself out in unison and in public with the same criminal defendant the Petitioners' arrested, their hope for fairness at trial is clouded by

that appearance of impropriety and the actual conflict of interest created by the relationship between Ms. Foxx and her political supporter Mr. Brown.

THE PETITIONERS

6. DAVID ALVAREZ, JR., JEREMY ARRINGTON, EMILIO DELEON, VICTOR GUEBARA, JEFFERY SHAFER and DIMAR VASQUEZ are Chicago Police Officers assigned to the 3rd District who were working on July 19, 2018. Their Sergeant that day was CORNELIUS BROWN. Their Lieutenant that day was RODNEY HILL. All of these men were in full uniform on July 19, 2018. The Petitioners have standing to Petition this Court because they are interested persons in the cause against Jedidiah Brown in that they were victims or witnesses during the events that led to the arrest and charging of Jedidiah Brown.

THE ARREST OF JEDIDIAH BROWN

7. On July 19, 2018 the Petitioners were working as police officers for the City of Chicago and assigned to the 3rd District. Late that afternoon they were assigned to monitor a protest at 7101 S. Jeffery Blvd. All of them had body worn cameras. In addition, a pod camera above was capturing the events below. Lt. Hill ordered his men to monitor the protest and not allow the protesters to impede the flow of vehicular and pedestrian traffic. Defendant Jedidiah Brown and his small band of protesters were warned by Lt. Hill on three separate occasions to adhere to the sidewalks and not impede the flow of traffic for the benefit of the citizens not involved in the protest. These warnings were audiotaped and videotaped. Mr. Brown refused to comply with police warnings. Videotaped evidence will show that prior to the protest defendant Jedidiah Brown prepared to physically engage with the police by removing his jewelry and other personal belongings. This preparation showed his

subsequent criminal actions were pre-meditated. He intended to be aggressive, defiant, and resistant to all police commands to follow the law and march peacefully. Mr. Brown knew he was going to fight with the police that day.

8. After several warnings Mr. Brown and a fellow protester intentionally blocked traffic, daring the police to react. Brown's associate was arrested first, peacefully and without a struggle. Nevertheless, Mr. Brown intentionally interfered with that arrest and yelled at the police to release the man. In an aggressive manner Mr. Brown charged at the police with his arms outstretched. Brown physically engaged with several officers. The pod camera above captured Mr. Brown punching one of the Petitioners. Brown's aggression and criminal disobedience required several police officers to effectuate his arrest. During the cuffing procedure, Mr. Brown kicked another Petitioner. He was transported to the 3rd District and held in custody.

THE CHARGING OF JEDIDIAH BROWN

9. Chicago Police detectives arrived at the police station to conduct further investigation. Videos from body worn cameras and pods cameras were collected and reviewed. The defendant's cell phone was inventoried because of its evidentiary value. The defendant was initially being held on felony charges of aggravated battery to two police officers. Members of the Cook County State's Attorney Office arrived at the station. At least one member was from the Felony Review Unit. Outside the presence of the Petitioners, meetings were held between a high-ranking member of State's Attorney Foxx' staff, CAPS Director Glen Brooks and District Commander Gloria Hanna-Gill. Despite video evidence supporting felony charges, the Cook County State's Attorney's Felony Review Unit

rejected felony charges. Inexplicably, and despite its evidentiary value, the Commander ordered the defendant's cell phone to be returned to him.

10. In an unusual timing of events, a close associate of Jedidiah Brown and another anti-police activist, Lamont Reccord, announced on his Facebook Live page that felony charges against Mr. Brown had been rejected by Ms. Foxx's office...before the Petitioners knew that felony charges had been rejected. This is the same activist who along with Mr. Brown confronted Chicago Police officers on July 26, 2018 during which Mr. Brown menaced the police with an extended metal baton, all of which was captured on video.
11. Prior to being released from police custody and ultimately charged with two counts of misdemeanor battery to a police officer, resisting arrest and obstruction of traffic by a non-motorist, Jedidiah Brown had a conversation with two of the Petitioners, Officer Vasquez and Officer Arrington. During the conversation Mr. Brown told these officers that he was a paid political worker for Kim Foxx, having worked on Ms. Foxx's campaign in 2015. In addition, Mr. Brown added that Ja'Mal Green, another close associate of the defendant, was paid a large sum of money from Ms. Foxx's campaign fund. Mr. Green was supposed to share it with the defendant and Lamont Reccord but did not, causing a rift between Mr. Reccord and Mr. Green. Ja'mal Green is the same person who recently called the police the "Blue Klux Klan." Ja'Mal Green is also on the stage with the State's Attorney at Operation Push showing his support.
12. The defendant's misdemeanor case was booked into Branch 38. A subsequent jury demand by Mr. Brown's attorney transferred the case to Branch 46 where it is pending today.

**CONFLICTS OF INTEREST BETWEEN THE STATE'S ATTORNEY AND
JEDIDIAH BROWN NECESSITATE THE APPOINTMENT OF A SPECIAL
PROSECUTOR TO PROSECUTE MR. BROWN**

13. Illinois law provides for the appointment of a special prosecutor in cases where the elected State's Attorney for the County "has an actual conflict of interest in the cause or proceeding." 55 ILCS 5/3-9008 (a-10).
14. This Court's jurisdiction under the special prosecutor statute may be invoked by the court, by the State's Attorney's office or, as here, by interested persons in a cause or proceeding. 55 ILCS 5/3-9008 (a-10). Certainly, the Petitioners, as victims and eyewitnesses in this case, are interested persons.
15. This Court shall consider the petition, any documents filed in response, and if necessary, grant a hearing to determine whether the State's Attorney has an actual conflict of interest in the cause or proceeding. 55 ILCS 5/3-9008 (a-10). Though the Court hearing the petition maintains discretion in determining whether the State's Attorney's "interest" in the case warrants the appointment of a special prosecutor, it is the duty of the Court to ensure that such judicial discretion is "exercised to promote the underlying policy of a just, fair and impartial hearing." *People v. Langston*, 353 Ill. App. 3d 422, 430 (1st Dist. 2004). If the Court finds that the petitioner has proven by sufficient facts and evidence that the State's Attorney has an actual conflict of interest in a specific case, the Court may appoint some competent attorney to prosecute or defend the cause or proceeding. 55 ILCS 5/3-9008 (a-10). The appointment of a special prosecutor compels the court to select a competent attorney. The State's Attorney cannot transfer authority to another attorney of her choosing, and certainly not an assistant in her office. *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, pp. 26-30. See also, *People ex rel. Kuntsman v. Nagano*, 389

- Ill. 231, 249-50 (1945) (holding that each elected State's Attorney is vested with constitutional and common law authority which cannot be transferred to another attorney).
16. The Petitioners maintain that the open and obvious political alliance between Jedidiah Brown and State's Attorney Foxx, as evidenced by the press conference of April 6, 2019, coupled with Mr. Brown's employment with Ms. Foxx during her political campaign of 2015, creates an actual conflict of interest that bars Ms. Foxx and her office from prosecuting Mr. Brown.
17. A State's Attorney is "interested" for the purposes of appointing a special prosecutor in three situations: "(1) where the attorney is interested as a private individual in the litigation, (2) where the attorney is an actual party to the litigation, and (3) where the attorney's continued participation would create the appearance of impropriety in the prosecution of a defendant." *People v. Lang*, 346 Ill. App. 3d 677, 680-81 (2d Dist. 2004); *People v. Bickerstaff*, 403 Ill. App. 3d 347, 352 (2d Dist. 2010). Here, there is clear and specific evidence demonstrating that the participation of the Cook County State's Attorney's Office would exacerbate the appearance of impropriety and prevent the administration of justice. See *People v. Courtney*, 288 Ill. App. 3d 1025, 1032 (3d Dist. 1997) (the "rigid rule" prohibiting an attorney from representing conflicting interests "is designed to protect against an actual conflict and the *appearance* of such conflict.") (emphasis in original).
18. Mr. Brown's paid assistance during Ms. Foxx' campaign in 2015 and his presence on center stage at Operation Push showing his support for the State's Attorney clearly establishes that the political relationship between the two is a strong and thriving relationship today...and that assumes the working relationship doesn't exist anymore. A casual, political volunteer from years past would not have been allowed to stand where Mr.

Brown did on April 6, 2019 for all of the press and public to see. At a minimum, Ms. Foxx owes a debt of gratitude to the defendant for his public display of physical and emotional support at a time when she needed it. That human element coupled with their prior working relationship gives rise to an actual conflict of interest. Any continued participation by the State's Attorney in Jedidiah Brown's criminal case ignores the obvious: the appearance of impropriety.

19. A recent case suggests that the language in *People v. Lang*, namely the "appearance of impropriety" language appears to be at odds with the Illinois Supreme Court case of *Environmental Protection Agency v. Pollution Control Board*, 69 Ill. 2d 394 (1977). The case, *In Re Appointment of Special Prosecutor (by Petitioner Emmett Farmer) v. The Cook County State's Attorney's Office*, 2019 IL App (1st) 173183, attempts to distinguish the holdings in *Lang* by averring that the Illinois Supreme Court only recognized two circumstances in 1977 that allowed for removal based on "interest," and not three circumstances like the *Lang* court held in 2004. Id p. 14. The First District in reviewing Emmett Farmer's petition believed that the *Lang* opinion could not be read consistently with the *Environmental Protection Agency's* opinion. Id p.14-15. Despite this disagreement, the Court recognized that the *Lang* case is still good law in light of the statutory amendment of 55 ILCS 5/3-9008 in 2016, and distinguished the Farmer petition from *Lang* on a factual basis, holding that the conduct of the State's Attorney in the Farmer petition was not extreme and particularized. Id p. 15. In the instant case, the Petitioners maintain that the recent press conference at Operation Push where the State's Attorney and a criminally charged defendant joined forces in a very public setting, was both extreme and particularized, warranting a special prosecutor to step in.

20. Assuming *arguendo*, that the *Lang* case is not controlling, and that the appearance of impropriety should be ignored, despite society's current demand for transparency in our criminal justice system, this Court should still appoint a special prosecutor in the defendant's case because the political relationship between Ms. Foxx and Mr. Brown makes the State's Attorney's interest in the case a personal interest. Our courts have held that "a political alliance may create a sufficient conflict of interest to require appointment of a special prosecutor." *Baxter v. Peterlin*, 156 Ill. App. 3d 564, 567 (3d Dist. 1987). In addition, the American Bar Association in its Criminal Justice Standards for the Prosecution Function advises all prosecutors that "the prosecutor should not permit the prosecutor's professional judgment or obligations to be affected by the prosecutor's personal, political, financial, professional, business, property, or other interests or relationships. Standard 3-1.7 (f), Conflicts of Interest.
21. Certainly, Ms. Foxx and Mr. Brown are entitled to their personal beliefs that police reform and criminal justice reform are more important than other issues. However, when the State's Attorney's personal beliefs, which were strongly expressed by her in her campaign to win an election, compromise her professional obligations to zealously represent the victims of crime, those beliefs may create a personal interest in a case that requires removal from that case. Petitioners submit that there's no hope for a zealous prosecution of Jedidiah Brown when the public political alliance between Mr. Brown and his current prosecutor compromise that prosecution. When you add in their political work history, justice and fairness demands the appointment of a special prosecutor. Indeed, a zealous prosecution of one of Ms. Foxx' current political allies, and a former co-worker, flies in the face of everything Ms. Foxx' stands for, politically.

22. The Illinois Rules of Professional Conduct state that a conflict of interest exists if there is a substantial risk that the representation of one or more clients will be materially limited by...a personal interest of the lawyer. Rule 1.7 of the Illinois Rules of Professional Conduct. Rule 1.7 applies to current public officers pursuant to Rule 1.11 (d). Under the ethical rules for Illinois lawyers, a conflict exists in the instant case and removal is the only way to remedy that conflict.

**THE APPOINTMENT OF A SPECIAL PROSECUTOR WILL ENSURE THE
FAIR ADMINISTRATION OF JUSTICE IN JEDIDIAH BROWN'S CASE
AND CURE THE APPEARANCE OF IMPROPRIETY**

23. The Petitioners deserve a fair trial just as much as the defendant Jedidiah Brown. Appointing a special prosecutor will ensure that the fair administration of justice will apply to both sides in the case.
24. The press conference of April 6, 2019 at Operation Push sent a message to the Petitioners that a political bond exists between State's Attorney Foxx and Jedidiah Brown. The presence of the defendant on the stage with the State's Attorney, and then later when Ms. Foxx posed for a picture with the defendant appears improper, to put it mildly. (See Exhibits A – C). Simply put, it looks bad. It doesn't pass the eye test when the Petitioners see their State's Attorney joined together with the man they arrested, and both of them are just a few feet away from the man who called them and their colleagues the "Blue Klux Klan." Ms. Foxx knew Jedidiah Brown had a criminal case pending and did nothing to separate herself from him and the appearance of impropriety. She should be removed from this case for her omissions to act in addition to her actions.
25. The simple act of talking to the defendant on April 6, 2019 was an ethical violation. Ms. Foxx knew the defendant was represented by counsel in his criminal case. Rule 4.2 of the

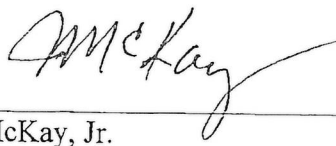
- Illinois Rules of Professional Conduct strictly prohibits a lawyer from communicating with a person the lawyer knows to be represented by counsel. Ms. Foxx shouldn't have spoken to Mr. Brown that day or any other day since counsel filed his appearance. While we don't know what they talked about, it looks inappropriate to say the least considering the defendant's pending criminal case. Posing for a picture with the defendant is inexcusable.
26. A prosecutor should avoid an appearance of impropriety in performing the prosecution function. Standard 3-1.2, Functions and Duties of the Prosecutor, American Bar Association's Criminal Justice Standards for the Prosecution Function.
27. The appearance of impropriety in this matter is overwhelming. If State's Attorney Foxx is truly interested in transparency in our criminal justice system, she should recuse her office from the case of the People of the State of Illinois v. Jedidiah Brown. Short of that, the only way to ensure the fair administration of justice and cure the appearance of impropriety is for this Honorable Court to appoint a special prosecutor.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Honorable Court appoint a special prosecutor to prosecute the case of the People of the State of Illinois v. Jedidiah Brown, Case No. 2018-1-20981901.

Respectfully submitted,

**DAVID ALVAREZ, JR.
JEREMY ARRINGTON
CORNELIUS BROWN
EMILIO DELEON
VICTOR GUEBARA
RODNEY HILL
JEFFERY SHAFER
DIMAR VASQUEZ**

By: 
James P. McKay, Jr.
Attorney for the Petitioners

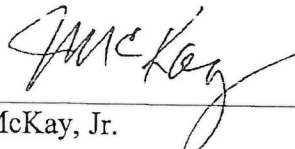
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CERTIFICATE OF SERVICE

The undersigned attorney certifies that he served the foregoing Notice of Motion and Petition to Appoint a Special Prosecutor in the case of the People of the State of Illinois v. Jedidiah Brown, Case No. 2018-1-20981901 by hand delivery before the hour of 5:00p.m. on Friday, April 19, 2019 upon:

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Cook County State's Attorney
69 West Washington St.
32nd floor
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Kimberly Foxx
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2650 S. California Ave.
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James P. McKay, Jr.

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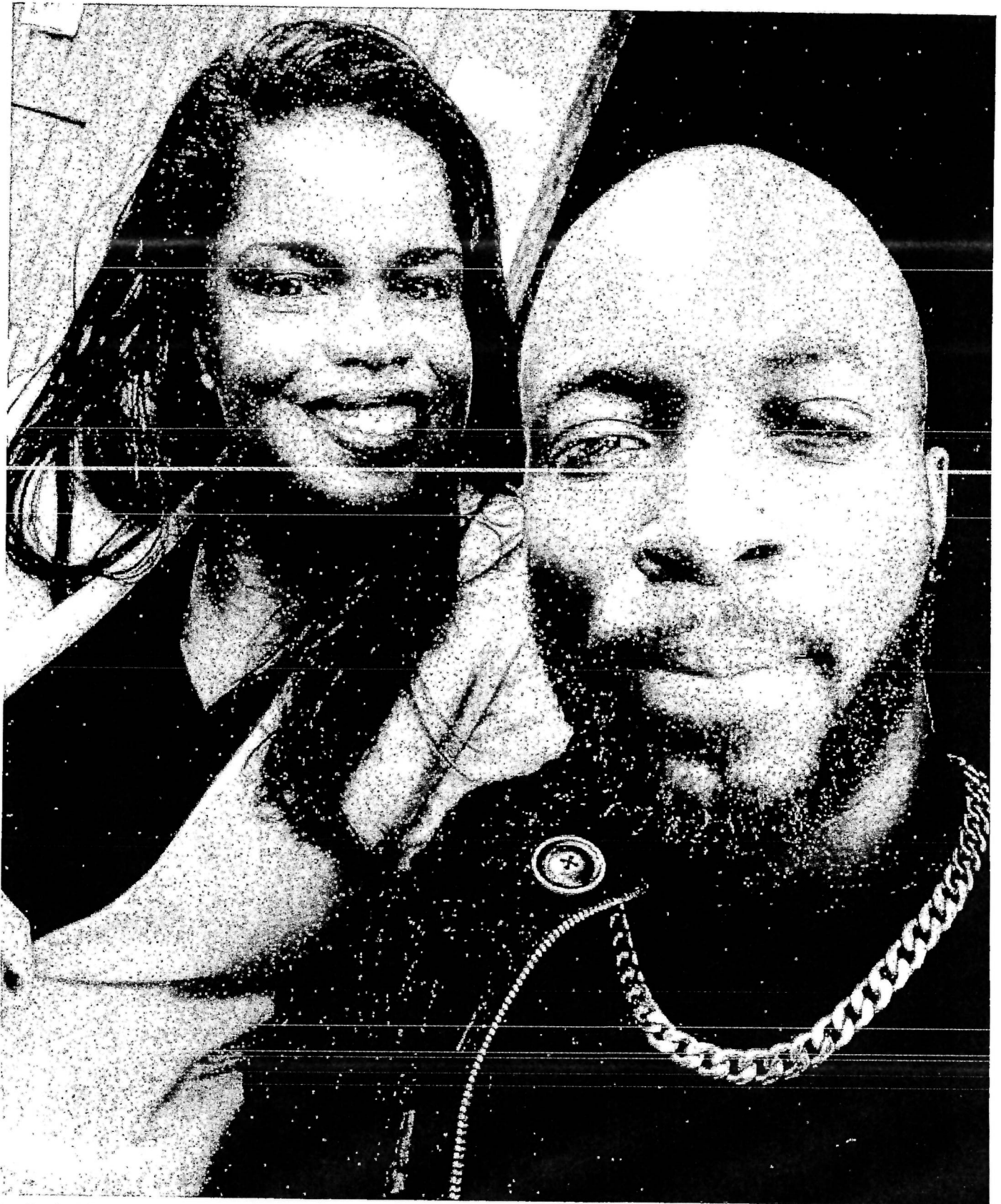
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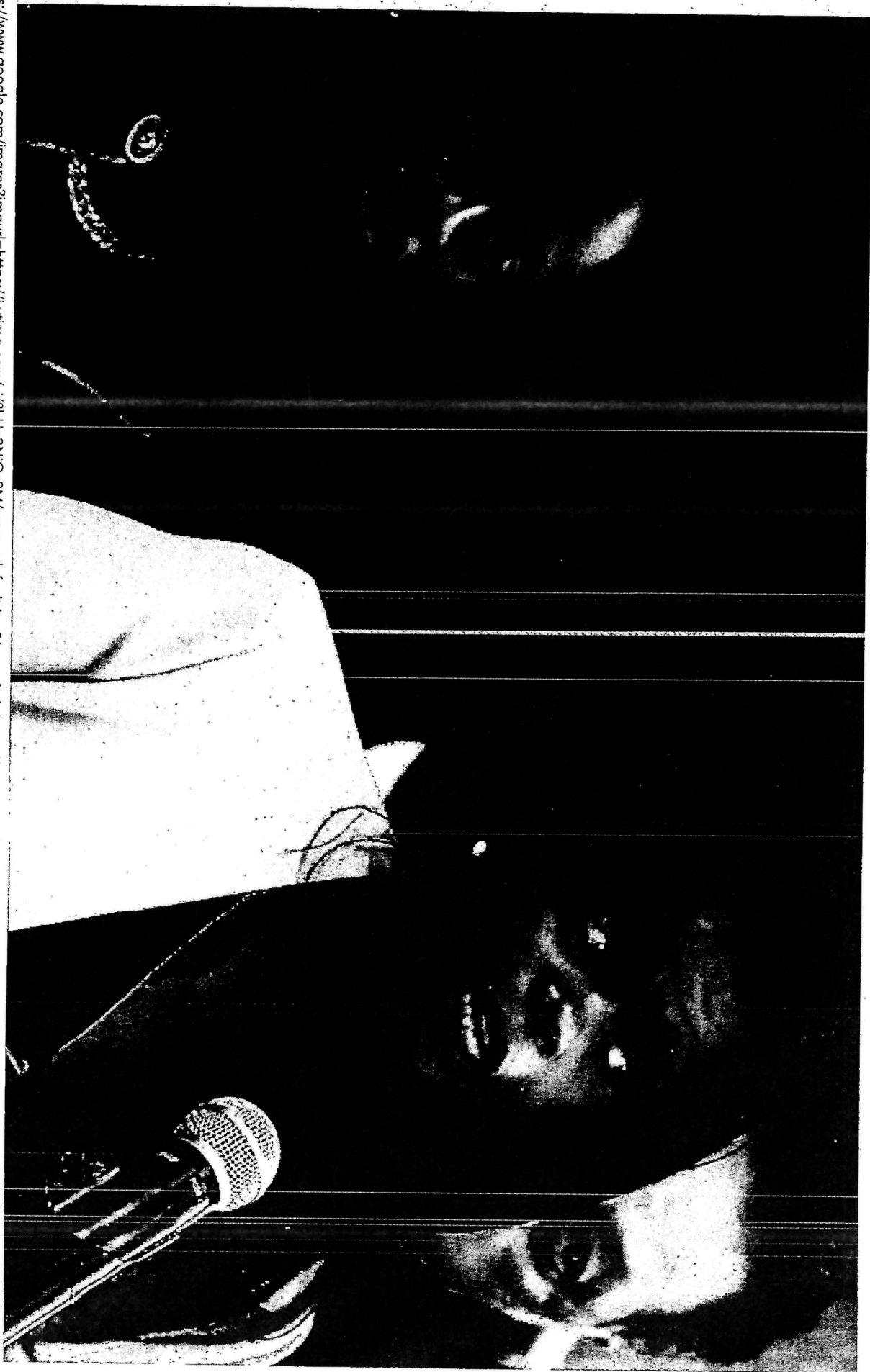
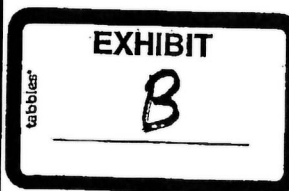


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